No. 20436

In the
United States Court of Appeal
For the Ninth Circuit

D. J. MILLER,
Appellant,

vs.

COUNTY OF LOS ANGELES, a political subdivision of the State of California,
Appellee.

Appellant's Reply Brief

APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
CENTRAL DIVISION

D. J. MILLER,
Post Office Box 728
Boulder City, Nevada
Propria persona.

WESTERN PRINTING COMPANY, WHITTIER—OXBOW 8-1722

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Appellant's Reply Brief

The closing argument will briefly point out the respects in which appellee has failed to meet the issues discussed in the opening brief.

I.

APPELLEE DOES NOT MEET THE CONSTITUTIONAL DUE PROCESS QUESTION.

Appellee does not meet the "*constitutional question*" although it admits in its Statement of the Case that the "case" comes under 28 U.S.C. Sec. 1331. Nowhere is there a word in appellee's brief on this question and the attendant doctrines of constructive fraud,

constructive trust, equity, although appellee does make an ineffectual rejoinder regarding estoppel; but, which ingenuously at the same time proves appellant's case.

Appellee has simply refused to equate the color of law, which it cites as a basis to deprive appellant of his property, with the numerous authorities and propositions which appellant has cited and argued, showing with full substance that appellee did take the property without due process of law in violation of the 14th Amendment to the Constitution of the United States. He has not said a word about the other California statute of limitations which would be applicable where there is constructive fraud.

Appellee's brief contains a table of authorities listing 15 cases, yet only two of these are federal ones, *Albatross Shipping Corp. v. Stewart,* (C.A. 5 1964) 326 Fed. 2d 208, at 211, and *Trowler v. Phillips* (C.A. 9 1958), 260 F. 2d 924, which appellee quotes out of context on page 27. Immediately following appellee's "quotation," therein, is a much more appropriate quotation and ruling of *this Court* as follows:

> "But all too often a set of unnecessary findings of fact is a telltale flag that points the way to a discovery that summary judgment should not have been granted."

II.

APPELLEE'S STATEMENT OF THE CASE IS MISLEADING AND, BY ITS OWN INTREPRETATION OF ESTOPPEL, APPELLANT SHOULD PREVAIL.

To begin with, "the statement of case" on page 4 of the respondent's brief is misleading as hereby quoted:

> "Appellant's affidavit, at most, alleged that appellant commenced a redemption payment plan in 1951 wherein the first payment (and it would appear the *only payment*) was made on November 13, 1951 (see *Exhibits A and A1,* Cl. Tr. 110-111); . . ." (Emphasis supplied.)

The above shows it concerned taxes prior to *1951,* yet on page 17 appellee lists the present taxes delinquent as beginning with *1953.* Actually, appellant had properly paid his taxes with respect to prior delinqency with *full* redemption payments, and would have done so in the instant delinquency if he had been given a chance. Because of financial limitations appellant had allowed the taxes to be a lien and willingly suffered the penalties and redeemed after they had accumulated for a number of years.*

Again, on page 4 appellee states:

> ". . . that receipt for the first payment was mailed to appellant in December 1951 (*Exhibit B,* Cl. Tr. 112); . . ."

*The record shows without rebuttal that other property owners redeemed such property deliquent a longer period than the instant property. (Tr. 095 Plaintiff's Affidavit, Par. 8.)

The purpose of the foregoing "exhibit" was to show the Court that appellant's address was inscribed in appellee's redemption department records.

Thus, continuing with a quotation from appellee's statement of the case:

> ". . . that other mail from an unknown person had been forwarded to appellant (*Exhibit B1,* Cl. Tr. 113) . . ."

The purpose of the above "exhibit" was to show that the *same address* held by said redemption department was *a valid one* and was so in the essence of time involved *in the processing* of the said property *through* said redemption department by the tax collector's officers.

Finally, regarding *appellant's* most *important "Exhibit C,"* appellee states:

> ". . . and that on January 10, 1962, in response to a letter from appellant apparently dated December 16, 1961, he was advised by the Tax Collector that the property had been deeded to appellee on October 19, 1960 (*Exhibit C,* Cl. Tr. 114)."

Here again appellee is grossly mistaken since there was *no* advising that the property in question had been deeded but (as covered in appellant's opening brief, page 10) the "letter" said several conflicting things, each erroneous and utterly misleading, so it was impossible to identify the or any property. On pages 19 and 22 of respondent's brief this "letter" is covered in effect, with the same misleading representations being made, but it admits as follows at page 19:

"Appellee would point out that the *only* misinformation contained in that letter *is the legal description* contained therein." (Emp. sup.)

The words "the only misinformation . . .is the legal description" might be taken facetiously if it were not so frivolous. What else is there to identify such real property? — But even the foregoing is only half the truth. Said "letter," as is pointed out at *page 10* of appellant's opening brief,

". . . IS A LETTER FROM APPELLEE'S OFFICERS DESCRIBING THE PROPERTY BY WHAT IS ACTUALLY A LEGAL DESCRIPTION CONSISTING OF *ONLY 10 ACRES,* ALTHOUGH THIS SAME LETTER SPECIFICALLY STATES IT TO BE 40 ACRES. IN REAL FACT APPELLANT'S LETTER OF INQUIRY REQUESTING INFORMATION CONCERNED AND DESCRIBED A TOTAL 200 ACRES, THE CORRECT AMOUNT OF HIS PROPERTY INVOLVED."* (Emp. sup.)

Again on page 22 appellee discusses "the letter" and it in good conscience assumes for the purpose of argument: that "*appellee should be estopped* from asserting statute of limitations *because* appellant *was misled* to his *detriment* . . ." Then appellee continues:

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*As listed in Mr. Skinner's letter (infra, and appendix).

". . . he was not so misled subsequent to January 10, 1962 . . ."

". . . and any misrepresentations, if any there were, were cured as of that date : . ."

Hence it will be seen it is not a case of assuming for the sake of argument. Instead, appellee has itself shown the argument is controlling because there was *no curing* by that "letter of January 10, 1962." How could there be? There was no possible identification of the 200 acres of property actually involved. Only a letter that said two erroneous conflicting things: a legal description of 10 acres; an area of 40 acres.

Appellee never does make clear when it actually conveyed the true information as to the property involved to appellant despite, as has been shown, a continuing volume of correspondence with appellee's officers right up to the date of filing suit.

Appellee makes a fatal error on page 22 wherein *it stipulates* that *estoppel* would *apply* "for a period not to exceed *one year* subsequent to *the time* appellant *was advised* of the *disposition of his property;* i.e., up and until January 10, 1963." Hence, even granting appellee its limitation on the application of estoppel, then according to its own interpretation suit was timely filed: said "letter of January 10, 1962" did not advise on the "disposition of [appellant's] property" because it was not identified. Whereas, when the actual time

of the "disposition of his property" was known [it] was *within a year* of the time of filing suit; therefore, for these reasons alone appellant should prevail.

The foregoing is proven by the following, beginning with an excerpt from appellant's letter dated *April 18, 1963* to appellee's Deputy County Counsel, *Mr. John D. Cahill,* which said in pertinent part:

> "I have not had responsive answers from your officers in the real estate department and tax collector's office. Particularly, in the *letter of January 10, 1962,* the description of the property is given as 40 acres, NW¼ of NW¼ of SE¼ of Section 15, 5 North 17 West . . ." (Emp. sup.)

Then, in response to the above letter, a letter was received from Mr. Skinner dated *April 30, 1963,* the entire body of which is hereby quoted with emphasis supplied:*

> "In reply to your letter of April 18, 1963 to Mr. John D. Cahill, Deputy County Counsel regarding the description of the property in Section 15 T5N R17W please be advised that it was assessed as two separate parcels, described as follows:
>
> *"160 acres NW¼ of Sec 15 T5N R17W and 40 acres NW¼ of SE¼ of Sec 15 T5N R17W."*

The controlling facts are, then: It was not until Mr. Skinner's letter of *April 30, 1963* that there was a cor-

*A reproduction of this letter is placed in the appendix. Of course, this is the same Mr. Skinner who is mentioned so prominently in appellee's brief (pages 2, 3, 4, 17).

rect legal description of the property involved to actually inform appellant that it was his land that had been taken. However, there was still a lack of clarity which is shown by appellant's subsequent letter of *May 2, 1963* to Mr. Skinner as follows:

> "Answering your letter of April 30th regarding erroneous description of my land, will you please admit that you did make an error previously on the description? That was the point of my letter to the County Counsel.
>
> "Also, did you acquire the property on the same operation?" ["The two separate parcels"]

No reply was received by appellant from Mr. Skinner: the errors were never admitted until it was so done in appellee's brief herein. Finally a letter dated *August 27, 1963* from *Mr. Cahill* invited appellant to file suit admitting in effect that the very constitutional question was involved that has been so held by this Court and upon which this action was based:

> "We realize that you disagree with our position in this matter, but that is your *constitutional prerogative.* We respect your position, but we disagree with it, and in order to resolve these differences, it would appear that the matter *will have to be litigated.*" (Emphasis supplied.)

Since the instant action was filed only a few months after receipt of said letter of August 27, 1963, well within the one year date from receipt of Mr. Skinner's

letter of *April 30, 1963* which appellee itself has in effect and for all practical purposes stipulated, on its own interpretation of estoppel would be a basis for such estoppel, it would, therefore, seem that appellee must *now* concede that its position is not only weak, but untenable.

III.

SUMMARY JUDGMENT FOR APPELLEE WAS IMPROPER IN THE INSTANT ACTION.

On page 6 appellee cites FRCP 56(c) but the quoted excerpts have the proviso "if the pleadings, depositions, answers to interrogatories, . . ."; but defendant has never even answered the Complaint. Appellant has had no opportunity to apply the discovery rules of federal civil procedure. Who can say what he would or could discover? Can appellant be said to have had his constitutional day in court to determine the constitutional question which this honorable Court has held to be "the case"?

Summary judgment for appellant, plaintiff below, would have been proper since there are sufficient admitted facts in his favor which leave no genuine unresolved issues to bar such judgment.

IV.

APPELLANT'S ADDRESS WAS KNOWN TO THE REDEMPTION DEPARTMENT.

Appellee has consistently ignored appellant's reference over and over again to the fact that his address was in the redemption department where the address was readily available in processing of the delinquent tax property between the redemption department and the tax deeded department of appellee's affiant Mr. Skinner. Appellant's opening brief statement of case (page 2):

> ". . . in that notices of such proceedings were not given to appellant although *his name and mailing address were known to the officials of appellee* who conducted such proceedings, and *appeared in the pertinent tax books and records of appellee . . .*"*

It is apparent that appellee is silent regarding his affiant Mr. Skinner's declaration as to the facts of the above quotation.

---

*Actually the quoted language is the words of this Honorable Court.

V.

SINCE THE ADDRESS WAS KNOWN IT DID NOT HAVE TO BE ASCERTAINED. THE PRESCRIBED LAW SHOULD HAVE BEEN FOLLOWED AND APPELLANT SENT A NOTICE.

On page 9 appellee states a requirement of Revenue Code Sections 3354 and 3355, ". . . to forward a notice thereof by registered mail to the last known assessee." All the tax collector had to do was look in his redemption department records in order to send the mail to the last know assesseee—appellant. The tax collector did not have *"to ascertain the address"* because he already had it in said redemption records. What would be the sense or point of his going to the assessment rolls in a different department to learn (ascertain) something he already knew? Appellee blindly insists without a smattering of logic that the tax collector had the right to close his eyes (ignore his duty and trust). Then appellee backs up the necessity for this (at page 23) on the basis that it was *"excused"* because of the failure to file a property statement. However, there has been submitted several letters* and sworn evidence (Tr. 138) with respect to appellee's neighboring and adjacent counties which all say that such a property statement *is not the "mode"* with uninproved real property. Again appellee ignores this evidence.

*The letter in the appendix (A.O.B.), due to printing inadvertance, omitted to identify the County of *Santa Barbara* and the date of Aug. 4, 1965; the other letter is from Ventura County (Tr. 140).

On page 10 appellee admits,

> ". . . the tax collector executes a deed of the property to the County which, *except* as against actual fraud . . ." (Emp. sup.)

Constructive fraud is the same as fraud (insofar as statutes of limitations are concerned (A.O.B. 20)) but while appellant has argued this point extensively, appellee has made no opposition to it or to the said California statute of limitations, Sec. 1573 Civil Code which provides for filing action after discovery.

VI.

APPELLEE'S ASSESSOR SUPPORTS APPELLANT.

The Los Angeles Times of January 10, 1966 in a subheading on an article on property taxes states some representations of appellee's new assessor as follows:

> *"Watson's View*
>
> "But for Los Angeles Assessor Philip Watson, a perennial crusader for reform, The property tax picture is probaby as bad as it is painted."
>
> "'What's really needed,' he said, 'is a complete rewriting of tax laws and tax approaches.' "

Mr. Watson further stated:

> " 'I'd take the welfare program out of the property tax. I accept that we must have a welfare program. . . .' "

Appellant's opening brief points in footnote 1 on page 7 to the fact that the property was his insurance against the necessity of any welfare program and he has sworn in his affidavit (Cl. Tr. 96) that the property is worth over 60 times the debt due appellee yet appellee avers in its brief that "public policy requires the application of the wrong or non-applicable statute of limitation." (Page 21.) Appellant submits that this is strange "public policy" and appellee goes on at this point to attempt to discredit the telephone conversations with its officers, but it cannot discredit the corroborating documentary evidence of that erroneous letter. (*Exhibit C,* Cl. Tr. 114.)

An article with dateline San Francisco (UPI) *December 13, 1965* has the heading:

"BADLY NEED
PROPERTY
TAX REFORM

> "Atty. Gen. Thomas C. Lynch said today the California assessors scandal demonstrates a need for sweeping changes of law, including a limit on property tax levies."

The article went on to quote as follows:

> "Investigations indicate transactions whereby public officials receive cash, bank stock and even a Rolls Royce, if you please, from grateful tax consultants."

CONCLUSION

The conclusion in appellee's brief "requests" the impossible, in other words, that this honorable Court not follow the high standards of fairness and justice which are exemplified by the *Elgass* case and which appellant himself has already received in the prior decision in this case. Appellant, then, does not request but merely relies and trusts in the standards and wisdom of this honorable Court.

Respectfully submitted,

D. J. MILLER,
plaintiff, *pro se.*

Appendix

APPENDIX

COUNTY OF LOS ANGELES
DEPARTMENT OF TAX COLLECTOR
HALL OF ADMINISTRATION
225 NORTH HILL STREET
CORNER OF TEMPLE AND HILL STREETS
LOS ANGELES 12, CALIFORNIA

April 30, 1963

Mr. D. J. Miller
Box 728
Boulder City, Nevada

Dear Sir:

In reply to your letter of April 18, 1963 to Mr. John D. Cahill, Deputy County Counsel regarding the description of the property in Section 15 T5N R17W please be advised that it was assessed as two separate parcels, described as follows:

160 acres NW¼ of Sec 15 T5N R17W and 40 acres NW¼ of SE¼ of Sec 15 T5N R17W.

Very truly yours,

HAROLD J. OSTLY,
COUNTY TAX COLLECTOR

L. E. Skinner
Head Clerk
Tax Deeded Lands Section

LES-ab

cc - Mr. Cahill

cc - Mr. Allenbaugh